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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

No. 71-821

DELTA DEVELOPMENT COMPANY, INC., ET AL.,
Petitioners,

versus

UNITED STATES OF AMERICA, GETTY OIL COMPANY, GULF OIL CORPORATION, THOMAS CONNELL and THE LOUISIANA LAND AND EXPLORATION COMPANY,
Respondents.

BRIEF OF GETTY OIL COMPANY AND GULF OIL CORPORATION IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Getty Oil Company and Gulf Oil Comporation (herein "Getty" and "Gulf") oppose the petition for a writ of certiorari filed in this Court by petitioners, Delta Development Company, Inc., et al. Getty and Gulf, made respondents with the United States and others in that petition, are mineral lessess of the United States and have interests identical to the Government in this litigation; in addition, the two companies filed six cross claims in their original pleadings, asserting several special legal positions and defenses against the claims of the present petitioners.

D. ARGUMENT

It is submitted that no issue in this case can possibly be classified as one of those enumerated in Rule 19(b) of the Rules of this Court so as to justify granting of a writ of certiorari. And even if by remote chance such a signal issue is found to be present, the decision of the district court in favor of respondents must be sustained on other grounds involving *factual* determinations made by the lower court as well as routine and well-settled issues of law. The Court of Appeals for the Fifth Circuit found so little merit in the appeal from the comprehensive ruling of the district court that it handled the appeal summarily under its Rule 18.

Some of the more obvious reasons for the denial of the petition for a writ are these:

1.

The principal issue in this case is whether the United States validly reserved the mineral rights in certain Louisiana properties when these lands were conveyed by the Government to one John E. Pottharst in 1947. As an essential corollary to that question, the court below had to find whether in fact the Secretary of the Interior determined that these properties were valuable for minerals before the sale was made to Pottharst. It is clear that under any statute that may be held to govern the transaction, a sale including the minerals could not have been validly made if in fact this mineral

determination had previously been made by the Secretary.[1]

The district court made a painstaking analysis of all of the actions of the Interior Department in processing the Pottharst application and determined factually that the evidence was overwhelming that the lands were in fact classified as being valuable for minerals prior to the time that Pottharst acquired any vested rights therein. The court went further and stated that to hold otherwise would be to charge the Secretary with having committed a fraud on the United States, an allegation which was not made in the pleadings by petitioners.

The gravamen of petitioner's complaint to this Court in seeking a writ is a two-fold contention, first that the district court was erroneous in its factual findings concerning the mineral classification and second that the factual determination of the Secretary of the Interior made some twenty-two years earlier should be reviewed and overthrown by this Court.[2]

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[1]Section 5 of the Act of July 5, 1884, 23 Stat. 104, on which petitioners rely, provides specifically that any lands valuable for minerals must be sold "exclusively under the mineral land laws of the United States." The Act of July 17, 1914, 38 Stat. 509, codified at 30 U.S.C. 121 et seq., which respondents have contended is applicable, is the broad public interest statute requiring the reservation of mineral rights from the sale of all lands of the United States where those lands have been classified as being valuable for minerals. For the complete text of these acts see pages 136-140 and 141-143 of the Appendix to the petition for a writ filed herein. All subsequent references herein to "App." are to this Appendix.

[2]A considerable portion of the petition for a writ is devoted to this subject. See pages 13 to 24 and 70 to 79 of the petition.

One of the more firmly settled principles of public land law, as established by several decisions of this Court, is that any question of fact decided by the Secretary is conclusive and is not open to relitigation in the courts. *Burfenning v. Chicago, St. P., M. & O. Ry. Co.*, 163 U.S. 321 (1896); *DeCambra v. Rogers*, 189 U.S. 119 (1903); *St. Louis Smelting and Refining Co. v. Kemp*, 104 U.S. 636 (1882). And, of course, a challenge to the factual rulings made by the district court and upheld by the court of appeal obviously presents no grounds for this Court to grant a writ under Rule 19.

Finally, petitioners, claiming as they do solely under John E. Pottharst, are in no position to challenge either the mineral classification of the land or the mineral reservation in the Pottharst patent. Well prior to the time that he acquired any rights in the land, Pottharst freely and voluntarily signed a "Mineral Waiver" in which he agreed that the property would be sold subject to the 1914 Act, thereby agreeing to the reservation of the minerals by the United States.[3]

2.

Petitioners also challenge the well reasoned decision of the lower court that the 1884 Act dealing with abandoned military reservation lands must be construed with the subsequent 1914 Mineral Reservation Act and that therefore the mineral rights were validly reserved by the United States from the sale to Pottharst under

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[3]See opinion of the district court, 322 F.Supp. 121, 125, 128, 131-132 (App. p. 113, 114 and 127-129).

the later statute. But in this connection petitioners failed signally to point out to the Court that this interpretation of the 1884 Act, as employed in the Pottharst transaction and approved by the court below, was in accordance with a consistent administrative construction given to that law by the Secretary for a period extending back fifty-five years prior to the filing of this suit.[4] This clearly brings into play the legal principal adopted by this Court that the courts will generally follow the interpretation given to a statute by the officer or agency charged with its administration, even if that interpretation is not the only reasonable one or possibly is not the result the court would have reached had the question arisen in the first instance in judicial proceedings. *McLaren v. Fleischer*, 256 U.S. 477 (1921); *United States v. Jackson*, 280 U.S. 183 (1930); *Udall v. Tallman*, 380 U.S. 1 (1965); *Boesche v. Udall*, 373 U.S. 472 (1963). The application of this principle is particularly appropriate in the present case dealing with abandoned military reservation lands since virtually all of these lands have now been disposed of, and a contrary ruling would cast a cloud on many titles.[5] Among these dispositions is the valuable oil, gas and mineral lease held by Getty and Gulf affecting the disputed minerals in this suit which had been developed at very substantial cost to these respondents prior to the judicial attack on the Pottharst patent.

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[4]See district court opinion for the series of regulations and rulings to this effect. 322 F.Supp. 121, 131 (App. p. 125-126).

[5]See the 1954 regulations of the Secretary, 43 C.F.R. Part 116 wherein it was stated: "Most of the lands affected by such regulations have been disposed of." The complete text of those regulations is shown as an addendum at page 9 herein.

In any event, the lower court's ruling is clearly sound in view of the fact that the 1884 statute was only a permissive one which gave the Secretary discretionary authority to sell, this in stark contrast to the restricted or "in praesenti" statutes that were dealt with in the cases relied on by petitioners. Also, as to the petitioners' contention that only the "mineral land" laws that were in effect in 1884 could be considered, both this court and appellate courts have uniformly held that where minerals or mineral laws are involved, subsequent statutes must be considered in construing grants of lands determined to be valuable for minerals, *Northern Pacific R.R. Co. v. Sanders*, 166 U.S. 620 1897); *Northern Pacific R.R. Co. v. Soderberg*, 188 U.S. 526 (1903) [and 104 F. 425 (9th Cir. 1900)]; *Nelson v. Northern Pacific R.R. Co.*, 188 U.S. 108 (1903); *West Coast Exploration Co. v. McKay*, 93 U.S. App. D.C. 307, 213 F.2d 582 (1954), cert. denied, 347 U.S. 989 (1954); *Anderson v. McKay*, 94 U.S. App. D.C. 11, 211 F.2d 798 (1954), cert. denied, 348 U.S. 836 (1954).

3.

The lower court also properly adopted the doctrine of acquiescence or administrative estoppel in holding that the present attack on the Potthart patent, made some nineteen to twenty years after it was issued, comes too late. See *Brennan v. Udall*, 379 F. 2d 803 (C.A. 10 1967), cert. denied 389 U.S. 975 (1967). Petitioners' attempted distinction of this decision from the present case is completely ineffective when it is considered that Pottharst voluntarily signed a Mineral Waiver and accepted the patent and that the leasehold rights of

Getty and Gulf vested before the attack was made on that patent by Pottharst's predecessors.

It is submitted, therefore, that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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E. CERTIFICATE OF SERVICE

I, Austin W. Lewis, attorney for Getty Oil Company, respondent, and a member of the Bar of this Court, here-

by certify that all parties required to be served with a copy of this brief have been duly served by mailing three copies of this brief to counsel of record representing them as follows, to-wit: Delta Development Company; Inc., through its attorney of record, A. Lane Plauche, 608 Pioneer Building, Lake Charles, Louisiana 70601; John E. Pottharst, Jr., Mildred Pottharst Ellis, Viola Pottharst Rowland (in various capacities) through their attorney of record, H. M. Holder, 1300 Beck Building, Shreveport, Louisiana 71101; The Louisiana Land and Exploration Company, through its attorney of record, J. B. Miller, Milling, Saal, Benson, Woodward & Hillyer, 1122 Whitney Building, New Orleans, Louisiana 70130; and by mailing three copies to Thomas Connell, in proper person, 538 Whitney Building, New Orleans, Louisiana 70130; in accordance with Supreme Court Rules, Rule 33, Paragraphs 1 and 2(a), all of the above having been mailed first class, postage prepaid, addressed, respectively, to counsel and/or proper person at the post office addresses above set forth, they residing within 500 miles of the undersigned, and by serving three copies thereof upon the United States by mailing same to the Solicitor General, Department of Justice, Washington, D. C. 20530, in an envelope so addressed, by air mail, postage prepaid, all of the foregoing having been deposited in the United States mail at New Orleans, Louisiana, on the ____ day of January, 1972.

AUSTIN W. LEWIS,
Attorney of Record

F. ADDENDUM

REGULATIONS
43 C.F.R. 116
(1954)

PART 116 — ABANDONED MILITARY RESERVATIONS[1]

CROSS REFERENCE: For public lands, military and naval reservations, Canal Zone regulations; see Panama Canal, 35 CFR Part 21.

§ 116.1 Installment payments for lands in abandoned military reservations optional with homesteader.

The act of August 23, 1894 (28 Stat. 491; 43 U.S.C. 1077, 1078), as amended by the act of February 15, 1895 (28 Stat. 664; 43 U.S.C. 1077, 1080), authorizing homestead entries in certain abandoned military reservations, provides:

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[1]Regulations governing the sale and disposal of lands in abandoned military reservations have been issued from time to time. Most of the lands affected by such regulations have been disposed of.

On June 4, 1936, the Department issued instructions with reference to the disposal of the remaining lands in such reservations, affected by E. O. 6010, Nov. 26, 1934 and E. O. 6964, Feb. 5, 1935. The instructions state:

"Lands in abandoned military reservations were included in the withdrawals, and thereafter such lands were subject to use and disposition as provided in the several sections of the Taylor Grazing Act. Following the reasoning in the cited instructions of Jan. 2, 1914, the lands within abandoned military reservations may now be included and used in grazing districts, and may be disposed of as provided in secs. 7, 8, 14 and leased as provided in sec. 15 of the Taylor Grazing Act."

The above-mentioned instructions of Jan. 2, 1914 are reported in 43 L. D. 33.

(a) That persons who enter under the homestead law shall pay for such lands not less than the value determined by appraisement, nor less than the price of the land at the time of the entry, and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior.

(b) The time for the payments in installments authorized by said act, and the interest thereon, will be as follows: Each homesteader will be given the option in making payment upon his entry of these lands, of making his payments in five equal payments to date from the time of the acceptance of his proof tendered on his entry, and the rate of interest upon deferred payments will be charged at the rate of 4 percent per annum.

(R. S. 2478; 43 U.S.C. 1201) [19 F.R. 8914, Dec. 23, 1954]